

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THOMAS E. PEREZ, Secretary of Labor,	:	
United States Department of Labor,	:	
	:	
Plaintiff,	:	Civil Action No.: 05 CV 2264 (JHR)
	:	
v.	:	
	:	
JAMES DOYLE, CYNTHIA HOLLOWAY,	:	
MICHAEL GARNETT, MARK MACCARIELLA,	:	
and the PITWU HEALTH AND WELFARE	:	
FUND,	:	
	:	
Defendants.	:	

ORDER APPOINTING AN INDEPENDENT FIDUCIARY TO THE PLAN

WHEREAS, this action was filed by the Secretary of Labor pursuant to Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., and by the authority vested in him by ERISA Section 502(a)(5), alleging that defendants James Doyle, Cynthia Holloway, Michael Garnett and Mark Maccariella failed to discharge their fiduciary duties to the PITWU Health & Welfare Plan (the “Plan”) in violation of ERISA Sections 404 and 405; and

WHEREAS the Court entered a default judgment against defendant Garnett in favor of the Secretary on June 30, 2010;

WHEREAS the Court entered an Order on December 7, 2009, approving the Partial Consent Judgment between the Secretary and defendant Maccariella directing Maccariella to restore \$195,317.00, plus prejudgment and post judgment interest;

WHEREAS the Court issued an Opinion on November 28, 2014, finding defendants Doyle and Holloway breached their fiduciary duties to the Plan resulting in a loss of \$4,698,871.98, exclusive of interest;

WHEREAS the Court issued a Final Judgment and Order on January 8, 2015 (the "Final Order"), ordering defendants to restore \$4,698,871.98, plus prejudgment interest in the amount of \$3,486,094.88, and post judgment interest, and deposit the Restitution Amount with the Clerk of Court;

WHEREAS the Court permanently enjoined the defendants in the Final Order from serving as fiduciaries to any ERISA covered Plan in the future;

WHEREAS the Court directed the Secretary in the Final Order to move the Court to appoint an Independent Fiduciary to administer the Plan;

WHEREAS the Secretary has moved Court to appoint Receiver Management Inc. ("RMI") as Independent Fiduciary to the Plan;

WHEREAS the Court having reviewed the Secretary's submissions, including the qualifications of RMI's personnel, and no parties objecting to the Secretary's proposal;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Court hereby appoints RMI as the Independent Fiduciary of the Plan with authority to administer the Plan. In performing its duties, the Independent Fiduciary shall have and exercise full authority and control with respect to the management or disposition of the assets of the Plan. The Independent Fiduciary shall collect, marshal, and administer all of the Plan's assets, create a trust account into which the Plan's assets shall be deposited, evaluate all claims outstanding against it, and pay the assets out to participants and other creditors of the Plan; and take such further actions with respect to the Plan as may be appropriate.

2. The Clerk is directed to provide the Independent Fiduciary at its request any sums deposited by the defendants with the Clerk pursuant to the Final Order, and to allow RMI to withdraw any such sums that the Clerk may have received from the defendants which were subsequently deposited into the Court Registry Investment System (“C.R.I.S.”) account.

3. The Clerk is directed to provide the Independent Fiduciary at its request any Plan assets previously deposited by the Secretary and/or the Plan’s prior third-party administrators with the Clerk or into a C.R.I.S. account.

4. The Independent Fiduciary shall have all powers to do the things that are necessary and appropriate to administer and terminate the Plan.

5. The Independent Fiduciary shall develop a plan for equitable adjudication and payment of outstanding participant claims for benefits. In developing this plan, the Independent Fiduciary shall consider the best interests of participants and beneficiaries of the Plan, and the resources expected to be available to the Plan. The Independent Fiduciary shall not be bound by any current or historic procedures or policies of the Plan which conflict with its duties under ERISA.

6. The Independent Fiduciary is empowered to require any custodian of the Plan’s records to deliver or otherwise make available to the Independent Fiduciary any information, documents, files or other compilations, wherever and however stored; that are reasonably necessary to perform the duties of Independent Fiduciary under this Order.

7. The Independent Fiduciary is empowered to give instructions to any custodian of the Plan’s assets respecting the disposition of assets of the Plan.

8. The Independent Fiduciary shall distribute or cause the distribution of the assets of the Plan in accordance with applicable Plan documents, Federal law, and any orders issued by this Court.

9. The Independent Fiduciary shall be subject to the orders of this Court. Within twenty days after the date of this Order, the Independent Fiduciary shall submit to this Court for approval its schedule of anticipated fees and expenses for this matter with copies of its submissions to be sent to all parties to this matter.

10. The Independent Fiduciary shall thereafter provide report to this Court on a quarterly basis the status of the administration of the Plan, the calculation of outstanding benefits due under the terms of the PITWU Fund, the amounts distributed for payment of benefits and the administrative charges associated with such administration.

11. In the performance of its duties, the Independent Fiduciary may retain such assistance as she may reasonably require, including attorneys, accountants, actuaries and other service providers.

12. Within twenty (20) days of the date of this order, the Independent Fiduciary will send his/her estimate of fees and expenses to the United States Department of Labor, Employee Benefits & Security Administration, at the following address:

U.S. Department of Labor-EBSA
The Curtis Center
170 S. Independence Mall West, Suite 870 West
Philadelphia, PA 19106
Attn: Marc I. Machiz, Regional Director

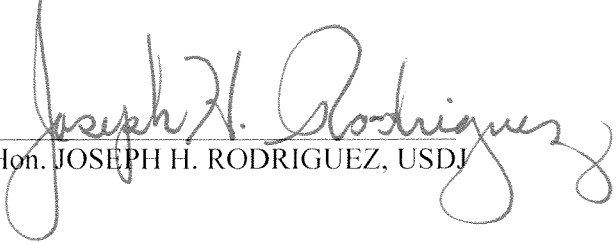
13. The Independent Fiduciary shall not be held personally responsible for any claims against the Plan or which existed, arose, matured or vested prior to the appointment of the Independent Fiduciary.

14. Within twenty (20) days of the date of this order, the Independent Fiduciary will inquire and determine whether or not it is required to post a bond under ERISA § 412, 29 U.S.C. § 1112. If the circumstances warrant, the Independent Fiduciary will post a bond pursuant to ERISA § 412, 29 U.S.C. § 1112.

15. Nothing in the foregoing Order shall be construed in derogation of the Court's authority over the Independent Fiduciary's actions.

DATED: July 28, 2015
Camden, New Jersey

IT IS SO ORDERED:


Hon. JOSEPH H. RODRIGUEZ, USDJ